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Oceans and the law of the sea

Letter dated 16 March 2010 from the Co-Chairpersons of the Ad Hoc Open-ended Informal Working Group to the President of the General Assembly

Pursuant to paragraph 127 of General Assembly resolution 63/111, we were appointed as Co-Chairpersons of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, which was established pursuant to paragraph 73 of resolution 59/24. In accordance with paragraph 127 of resolution 63/111, paragraphs 79 and 80 of resolution 60/30, and paragraph 146 of resolution 64/71, the Working Group met at United Nations Headquarters from 1 to 5 February 2010.

We are pleased to inform you that the Working Group fulfilled its mandate to provide recommendations to the General Assembly as requested in resolutions 63/111 and 64/71, and have the honour to submit to you the outcome of the meeting, which consists of the recommendations adopted by the Working Group for transmittal to the General Assembly at its sixty-fifth session (sect. I) and a Co-Chairpersons's summary of discussions (sect. II) on key issues, ideas and proposals raised during the deliberations under the various agenda items (see A/AC.276/3).

We request that you kindly circulate the present letter, including the recommendations and the Co-Chairpersons summary of discussions, as a document of the General Assembly, under item 75 (a) of the preliminary list.

(*Signed*) Palitha T. B. **Kohona**
Liesbeth **Lijnzaad**
Co-Chairpersons

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I. Recommendations of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction

1. The Ad Hoc Open-ended Informal Working Group established by the General Assembly in its resolution 59/24 to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction recalled the central role of the General Assembly in addressing these issues and highlighted in this context the important role of the Working Group. The Working Group also recalled that 2010 was the International Year of Biodiversity.

2. Based on its discussions, the Working Group makes the following recommendations to the General Assembly:

Strengthening the information base

3. States and competent international organizations should use the best available scientific information in the development of sound policy relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

4. States and competent international organizations should conduct further marine scientific research to increase the understanding of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, in accordance with international law, in particular the United Nations Convention on the Law of the Sea.

5. States and competent international organizations should develop and strengthen mechanisms that facilitate the participation of developing countries in marine scientific research, including through the Endowment Fund of the International Seabed Authority and activities of the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization, within their respective mandates, and joint projects and other relevant mechanisms.

6. It should recognize the need to consolidate and harmonize data, as appropriate, including by improving functional links among existing databases, and to identify measures and institutional arrangements that may be required to establish such functional linkages.

Capacity-building and technology transfer

7. Capacity-building and the transfer of technology, including south-south technical cooperation should be promoted, facilitated and strengthened for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

8. Competent organizations, in cooperation with States should develop capacity-building programmes and workshops for the sharing of skills relating to scientific and technical aspects of the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, as well as training opportunities.

9. Relevant organizations should collect and disseminate information on available capacity-building opportunities and on the needs expressed by developing countries, and such organizations should consider how cooperation and coordination can be enhanced in this area.

10. The General Assembly should recognize the need to make progress in the implementation of the provisions of the United Nations Convention on the Law of the Sea on the development and transfer of marine technology; and in that context, States and competent international organizations should apply and implement the Criteria and Guidelines on the Transfer of Marine Technology adopted by the Assembly of the Intergovernmental Oceanographic Commission of the United Nations Educational, Scientific and Cultural Organization in 2003.

Cooperation and coordination in implementation

11. States should apply relevant approaches for the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, effectively implement relevant global and regional instruments to which they are parties, and consider becoming party to relevant instruments to which they are not yet party.

12. States and competent international organizations should facilitate and enhance cooperation and coordination, including, as appropriate, through participation in regional seas conventions and regional fisheries management organizations/arrangements, exchange of information on best practices, and establishment of joint or coordinated programmes of work and activities.

Cooperation and coordination for integrated ocean management and ecosystem approaches

13. States and competent international organizations should work towards a more integrated and ecosystem-based approach to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, in order to strengthen cross-sectoral cooperation and effectively address sectoral and cumulative impacts.

Environmental impact assessments

14. The General Assembly should recognize the importance of environmental impact assessments, in particular for the implementation of ecosystem and precautionary approaches.

15. It should request the Secretary-General to include, in the annual report on oceans and the law of the sea, information on environmental impact assessments undertaken with respect to planned activities in areas beyond national jurisdiction, including capacity-building needs, on the basis of information requested from States and competent international organizations.

16. It should recognize the importance of further developing scientific and technical guidance on the implementation of environmental impact assessments with respect to planned activities in areas beyond national jurisdiction, including consideration of the assessment of cumulative impacts.

Area-based management tools, in particular marine protected areas

17. The General Assembly recognize the work of competent international organizations related to the use of area-based management tools and the importance of establishing marine protected areas consistent with international law and based on scientific information, including representative networks by 2012, as called for in the Johannesburg Plan of Implementation of the World Summit on Sustainable Development.

18. It should call upon States to work through competent international organizations towards the development of a common methodology for the identification and selection of marine areas that may benefit from protection based on existing criteria, with a view to facilitating achievement of the 2012 target on establishing marine protected areas in the Johannesburg Plan of Implementation.

Marine genetic resources

19. The General Assembly should call upon States, in the context of the mandate of this Ad Hoc Open-ended Informal Working Group, to make progress in the discussion, as referred to in paragraph 142 of General Assembly resolution 64/71, on the relevant legal regime on, and implementation gaps in, conservation and sustainable use of marine genetic resources in areas beyond national jurisdiction in accordance with international law, in particular the United Nations Convention on the Law of the Sea, taking into account the views of States on Parts VII and XI of the Convention.

Way forward

20. The General Assembly should decide to convene a meeting of the Ad Hoc Open-ended Informal Working Group in 2011, in order to provide recommendations to the General Assembly.

II. Co-Chairpersons' summary of discussions*

21. The Working Group met at United Nations Headquarters, from 1 to 5 February 2010. In accordance with paragraph 127 of General Assembly resolution 63/111, and paragraph 146 of resolution 64/71, the Working Group was convened to provide recommendations to the General Assembly. The Deputy Secretary-General, Asha-Rose Migiro, opened the meeting on behalf of the Secretary-General.

22. The meeting was presided over by two Co-Chairpersons, Ambassador Palitha T. B. Kohona (Sri Lanka) and Liesbeth Lijnzaad (Netherlands), appointed by the President of the General Assembly in consultation with Member States. The following Friends of the Co-Chairpersons were nominated by the regional groups: Mr. Saliou Niang Dieng (Senegal) and Mr. Dire David Tladi (South Africa) for the Group of African States; Mr. Kumar Pradip Choudhary (India) and Ms. Emma Romano Sarne (Philippines) for the Group of Asian States; Ms. Fernanda Millicay (Argentina) and Ms. Ana Cristina Rodríguez-Pineda (Guatemala) for the Group of Latin American and Caribbean States; Mr. Toma Galli (Croatia) and Mr. Aleksander Čičerov (Slovenia) for the Group of Eastern European States; and

* The summary is intended for reference purposes only and not as a record of the discussions.

Mr. Declan Smyth (Ireland) and Ms. Elizabeth Kim (United States of America) for the Group of Western European and Other States.

23. Representatives from 89 Member States, 16 intergovernmental organizations and other bodies and 7 non-governmental organizations attended the meeting of the Working Group.

24. The following supporting documentation was available to the Working Group: (a) provisional agenda (A/AC.276/L.3); (b) draft format and annotated provisional agenda and organization of work (A/AC.276/L.4); and (c) report of the Secretary-General on oceans and the law of the sea (A/64/66/Add.2). The Working Group adopted the agenda as amended (A/AC.276/3), and agreed to proceed on the basis of the annotated agenda and organization of work.

25. Based on the discussions in the Working Group, the Co-Chairpersons, in consultation with the Friends, prepared draft recommendations for consideration by the Working Group. On 5 February, the Working Group adopted recommendations by consensus; they are contained in section I of the present document.

26. In joining the consensus, several Member States non-parties to the United Nations Convention on the Law of the Sea stated that the agreed recommendations did not prejudice their position in relation to the Convention and should not be interpreted in a way that prejudiced their status as non-parties.

27. At the request of the Working Group, the Co-Chairpersons prepared the present brief summary of discussions on key issues, ideas and proposals referred to or raised during the deliberations under the various agenda items. The summary reflects the structure of the recommendations and includes the proposals presented under agenda item 6.

General considerations

28. Delegations recalled that sustainable use of the oceans and their resources was critical to maintaining life on the planet. In particular, it played a key role in ensuring food security, better health, economic prosperity, and in providing energy sources. Several delegations noted that the conservation and sustainable use of marine biodiversity was important for attaining sustainable development, particularly for developing countries. However, human pressures on the marine environment were increasing and impacting the long-term health, resilience and productivity of marine ecosystems and marine biodiversity, including as a result of climate change.

29. Several delegations highlighted the urgent need to address the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction, including on the basis of the precautionary approach. In that regard, the designation of 2010 as the International Year of Biodiversity was stressed. Several delegations also recalled the existing framework provided by the Convention, as complemented by other legal instruments, in particular the Convention on Biological Diversity, as well as the Johannesburg Plan of Implementation adopted at the World Summit on Sustainable Development and the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States and the International Guidelines on the Management of Deep-sea Fisheries in the High Seas adopted by the Food and Agriculture Organization of the United Nations (FAO).

30. Several delegations were of the view that the Working Group was the only international forum in which all aspects of marine biodiversity beyond areas of national jurisdiction were dealt with. They noted that the Working Group enabled broad participation by States and interested stakeholders and comprehensive and intersectoral discussions on those issues.

Strengthening the information base

31. Some delegations noted that there was an urgent need for more research, in particular, of an interdisciplinary nature, on the state of marine biodiversity beyond areas of national jurisdiction. The need to promote scientific research in the deep and open ocean, which were the least known areas, was stressed. The view was expressed that commonly accepted scientific and technical evidence was essential for the conservation and sustainable use of marine biological resources beyond areas of national jurisdiction.

32. Several delegations highlighted the critical role of sustained scientific research in order to improve the scientific understanding and knowledge of, for example, the impact of human activities and their cumulative effects in the oceans, as well as the identification of areas and species of interest and the classification of habitats and ecosystems. It was noted that the information on vulnerable habitats and ecosystems was often incomplete and that significant gaps existed in the understanding of ocean processes. This called for regular monitoring of ocean natural systems to establish a baseline upon which to compare changes and trends, and to provide science-based information to decision makers. The role of predictive modelling to overcome some knowledge gaps was also referred to by some delegations.

33. Many delegations expressed the view that the Convention provided a solid framework for marine scientific research beyond areas of national jurisdiction and for the sharing of information. Some delegations pointed out that knowledge-sharing was essential for identifying ecologically or biologically significant areas in need of protection (see para. 61 below).

34. The collection and exchange of information was considered by many delegations as critical to promoting the conservation and sustainable use of marine biodiversity, as well as the strengthening of a common information base. The view was expressed that collaborative approaches to the gathering, management and dissemination of knowledge at the national level through, for example, centres of scientific expertise and networks of experts, needed to be strengthened. It was also emphasized that cross-sectoral cooperation and coordination, including between intergovernmental organizations, was important with regard to improving the use of consolidated and linked databases and promoting the standardization of data, including with respect to taxonomy. Some delegations recalled the role played and the programmes carried out by intergovernmental organizations, such as FAO, the Intergovernmental Oceanographic Commission (IOC), the International Seabed Authority, as well as bodies under the Convention on Biological Diversity with regard to data collection, compilation, management and dissemination. The view was expressed that there was a need to integrate scientific advice, for example, in the context of joint initiatives involving the International Maritime Organization (IMO), regional fisheries management organizations and/or arrangements, Regional Seas Programmes of the United Nations Environment Programme (UNEP) and other organizations. The International Oceanographic Data Information Exchange and the

Ocean Biogeographic Information System of IOC, as well as the Census of Marine Life, were recalled by some delegations as examples of effective management of data and possible cooperative approaches to fill knowledge gaps. Some delegations proposed that the International Seabed Authority establish a database of information on biodiversity beyond areas of national jurisdiction, without prejudice to the question of the legal status of marine genetic resources.

35. The essential role of scientific knowledge as a basis for sound decision-making was highlighted and the need for strengthening the linkages between research and policymaking was also noted.

36. Several delegations welcomed the outcome of the Ad Hoc Working Group of the Whole whereby a course of action was recommended to the General Assembly on the regular process for global reporting and assessment of the state of the marine environment, including socio-economic aspects (the "Regular Process"), which met from 31 August to 4 September 2009. They noted that the Regular Process, when operational, would help to address the current fragmented information from different and unevenly distributed assessments and to enhance informed decision-making. in that regard, support was expressed for the recommendations made by the Group of Experts on the "Assessment of Assessments".

37. Other delegations noted that, while they supported the Regular Process, it was not yet operational. They wondered whether the Regular Process could become a centre for gathering data, including for the Area. The particular view was stressed that some of the regional assessments in the report of the "Assessment of Assessments" had generated some reservations.

Capacity-building and technology transfer

38. Generally, delegations recognized the need for increased capacity-building and technology transfer in order to enable developing countries, including small island developing States to contribute effectively to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. The view was expressed that States with economies in transition also needed support in that respect. Several delegations stressed the need to enhance cooperation and coordination with developing countries in creating assistance programmes for conservation, management and monitoring activities, including through "training of trainers" initiatives and joint projects aimed at building skills and knowledge, with the participation of scientific institutes and researchers.

39. Several delegations emphasized the need to enhance the capacity of developing countries to collect and assess scientific information, and stressed the need for conducting marine scientific research in accordance with the Convention. The urgent need for continued and enhanced participation of scientists from developing countries in marine scientific research in the Area and the essential role of the International Seabed Authority in that respect was underlined.

40. Some viewed the transfer of technology as an essential tool for capacity-building in the sphere of marine science. Several delegations noted that Part XIV of the Convention, on the development and transfer of marine technology, contained provisions with the greatest gap in their implementation. Some other delegations pointed out that the "IOC Criteria and Guidelines on Transfer of Marine

Technology", adopted pursuant to Part XIV, were a useful tool for fostering technology transfer.

41. Several delegations emphasized the need for cooperation and coordination in information-sharing, particularly among States with and without such capacity, including through the establishment of centralized and standardized databases (see also para. 34). They also stressed the need to match available assistance with capacity needs. It was also recalled that, under the Convention, States were required to cooperate through mechanisms under Part XIII and XIV and through trust and endowment funds, in particular the International Seabed Authority Endowment Fund. Several delegations referred to the framework provided by the Regular Process as a means to assist developing countries in building their capacity and in achieving the Millennium Development Goals. The need for donor agencies to keep their programmes systematically under review was also highlighted.

Cooperation and coordination in implementation

42. It was generally recognized that gaps in the implementation of the international legal and policy framework remained, in spite of some progress achieved in recent years. Specific examples of progress cited by various delegations included: the adoption of the Convention on the Conservation and Management of High Seas Resources in the South Pacific Ocean (November 2009); the adoption of the FAO International Guidelines on the Management of Deep-sea Fisheries in the High Seas (August 2008); the work of FAO on by-catch management and reduction of discards; increased geographic and species coverage of regional fisheries management organizations and/or arrangements; efforts to implement General Assembly resolution 61/105; and good practices, such as the joint meeting of Tuna regional fisheries management organizations (June 2007), and interim measures for bottom fisheries management in the North-West Pacific.

43. The need to focus on the improvement of implementation of the existing regulatory framework was generally recognized by delegations. In this connection, the following particular needs were identified by delegations: encouraging universal participation in the Convention and participation in existing regional instruments and bodies; improving flag State implementation; enhancing port State control; enhancing international cooperation and coordination, including coordination among sectors; fostering the capacity of States to effectively implement the Convention and the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks ("United Nations Fish Stocks Agreement"); supporting the implementation of tools, such as marine protected areas and environmental impact assessments, through developing a common methodology under existing international instruments for the designation of marine protected areas and a global methodology for carrying out environmental impact assessments at the regional level; adopting modern principles for ocean conservation and management; and studying the relationship between intellectual property rights and the Convention, as well as the modalities of cooperation between those carrying out marine scientific research and the marine biotechnology industry. The view was expressed that the use of market-based measures should be addressed. Delegations emphasized that capacity-building and transfer of technology to developing countries were crucial to

addressing implementation gaps. Several delegations specifically encouraged international cooperation with respect to marine science (see also para. 38).

44. Divergent views were expressed regarding possible gaps in the institutional framework. A proposal was made to work on the establishment of an institutional framework for the conservation and management of marine biodiversity beyond areas of national jurisdiction, taking into account the principles of Part XI of the Convention and the role of the International Seabed Authority. This regime would address, among other matters, cooperation in marine scientific research, the exchange and dissemination of information on research programmes and their results, as well as cooperation in technology transfer. Other delegations were not supportive of the proposals involving the creation of new institutions, and preferred to focus on the strengthening of existing ones, in particular regional fisheries management organizations and/or arrangements, through improving decision-making, updating their mandate, and increasing cooperation with regional environmental organizations. Several delegations proposed the establishment of regional conventions or agreements for areas where coverage had not yet been achieved.

45. Several delegations considered that an implementing agreement under the Convention was the most appropriate way to deal with implementation gaps in the long term. A proposal was made to convene a diplomatic conference or to strengthen the Working Group, which could initiate preparations for such an agreement. Other delegations, however, did not see the need for an implementation agreement. The view was expressed that the legal regime for the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction was provided by the Convention on Biological Diversity.

Cooperation and coordination for integrated ocean management and ecosystem approaches

46. The key role of various sectors in oceans governance was highlighted. Some delegations underlined the role of regional environmental organizations and regional fisheries management organizations and/or arrangements in fostering integrated ocean management. In that regard, a view was expressed in support of building upon the work that was already accomplished in a sectoral and regional context.

47. Several delegations noted that the fragmented nature of the current sectoral framework and the lack of an integrated approach at the global level did not allow for a coordinated and comprehensive approach to the effective conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Other delegations proposed that biodiversity considerations and ecosystem objectives be incorporated in sectoral management plans.

48. It was generally recognized that cooperation and coordination among States and international and regional organizations and across sectors and regimes was critical for integrated ocean management. Several delegations noted that an essential foundation for effective cooperation and coordination was a common understanding of goals and objectives. A view was expressed that, if fully implemented, the mandates of existing organizations provided practical ways to enhance cooperation and coordination at the regional and global levels. The need for a framework allowing the bodies established under the Convention to play a central role in the promotion of cooperation and coordination at all levels was also stressed.

49. To facilitate and improve cooperation and coordination, delegations proposed the following measures: increased participation in organizations and bodies at the national, regional and global levels; better coordination at the national level; exchange of information and best practices among international organizations with a view to providing regulatory bodies with a common, unified scientific basis for decision-making; joint or coordinated programmes of work and activities among organizations; and the development of memorandums of understanding between and among regional organizations and organizations dealing with particular sectors. Some delegations considered cooperative arrangements at the regional level to be the most effective ones. Another view was expressed that the Regular Process, when operational, would provide an integrated knowledge base to be used by sectoral bodies in planning and management.

50. Several delegations proposed that management approaches, such as ecosystem and precautionary approaches, should be incorporated more widely into instruments at the national, regional and global levels. This could be achieved through adopting new instruments or amending the existing ones. A proposal was made for the Working Group to consider how the agreed consensual elements on ecosystem approaches and oceans adopted by the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, as subsequently endorsed by the General Assembly in resolution 61/222, could be applied and implemented in relation to biodiversity beyond areas of national jurisdiction. A proposal was also made that the General Assembly identify overarching principles, which would define an ecosystem approach to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction. Such principles could include: long-term conservation and sustainable use of marine resources, with an emphasis on ecosystem structures and their functioning and on key processes; commitment to base management decisions on the best available information, while also appropriately assessing and managing risks and applying a precautionary approach; and avoiding significant adverse impacts on marine ecosystems and biodiversity, minimizing adverse impacts and addressing cumulative impacts. It was also observed that environmental impact assessments, area-based management tools, improved research and data collection and sharing should be regarded as tools for implementing an ecosystem approach beyond areas of national jurisdiction. Some delegations stressed that ecosystem approaches would vary, depending on the context in which they were to be developed and applied.

Environmental impact assessments

51. A number of delegations highlighted the increasing intensity of human activities in the oceans and the need to assess anthropogenic impacts on marine biodiversity beyond areas of national jurisdiction. Several delegations underlined the need for international cooperation in assessing and controlling such impacts, including through technical and financial support. It was noted that environmental impact assessments and strategic environmental assessments were important tools in the implementation of ecosystem approaches to ocean management. A view was also expressed in support of a need to harmonize requirements for environmental impact assessments in international instruments.

52. Several delegations recalled provisions in the existing international instruments requiring States to carry out environmental impact assessments. Some delegations highlighted, in particular, the obligations under the Convention,

especially in articles 205-206, and the importance of effectively implementing them. Other instruments cited included the Convention on Biological Diversity, the United Nations Fish Stocks Agreement, and relevant instruments developed in the context of FAO, IMO, the International Seabed Authority, and regional fisheries management organizations and/or arrangements. Reference was also made to General Assembly resolutions 61/105 and 64/72 in relation to the impacts of destructive fishing practices on vulnerable marine ecosystems.

53. Several delegations highlighted gaps in the application of environmental impact assessments to activities beyond areas of national jurisdiction and inconsistencies in the standards and approaches of such assessments. Some delegations proposed to review experiences in applying environmental impact assessments beyond areas of national jurisdiction and to carry out an assessment of opportunities and challenges in that regard. Several delegations identified the need to address gaps in knowledge, capacity and technology transfer. A view was expressed that monitoring and control also needed to be considered. Several delegations noted that existing practice at the international and regional levels did not provide for the assessment of the cumulative impact of various activities, and highlighted the need for progress in this respect. The view was expressed that strategic environmental assessments dealt more effectively with the assessment of cumulative impacts, as they involved the assessment of policies, programmes and plans, as opposed to individual activities.

54. Several delegations welcomed the work conducted in the context of the Convention on Biological Diversity on scientific and technical aspects relevant to environmental impact assessments in marine areas beyond national jurisdiction. Some delegations emphasized the need for further work in that regard, including the adaptation of existing Convention on Biological Diversity voluntary guidelines on biodiversity-inclusive impact assessment and draft guidance on biodiversity-inclusive strategic environmental assessment, for application beyond areas of national jurisdiction. Other delegations highlighted the important role of the International Seabed Authority in the protection of the marine environment from activities in the Area, including through the application of the precautionary approach.

55. Several delegations proposed elaborating a global methodology for carrying out environmental impact assessments at the regional level, taking into consideration sectoral activities. It was contended that this would facilitate consistent follow-up action, focusing both on the potential impacts of human activities and on the identification of vulnerable marine ecosystems likely to be affected.

56. Several delegations emphasized that activities with the potential to cause significant adverse impacts on vulnerable marine ecosystems should not proceed unless there were measures in place that could minimize such impacts. An impact assessment was important in determining the risk of significant adverse impacts and in selecting appropriate measures. Several delegations proposed applying the approach contained in resolution 61/105 on the assessment of bottom fishing activities, to all activities beyond areas of national jurisdiction that could have a significant adverse impact on vulnerable marine ecosystems. In this regard, several delegations proposed the adoption of a resolution by the General Assembly on the implementation of environmental impact assessments, incorporating a process

similar to the one established in resolution 61/105. Another view was expressed that the approach outlined in resolution 61/105 should not be applied to all activities beyond areas of national jurisdiction regardless of the nature of the activity or sector. The need to permit scientific or exploratory activities that did not cause significant adverse impact was also emphasized.

57. Some delegations highlighted the potential role of the Regular Process in environmental impact assessments. The view was expressed that the GRAME Database could serve as a repository of assessment reports that could be drawn upon by the Regular Process in its periodic assessment of the use and state of the global marine environment.

Area-based management tools, in particular marine protected areas

58. A number of delegations noted the fundamental role of area-based management tools, including marine protected areas, in the conservation and sustainable use of marine biodiversity and in ensuring the resilience of marine ecosystems, including beyond areas of national jurisdiction. The importance of these tools, as part of a range of management options, in implementing precautionary and ecosystem approaches to the management of human activities and in integrating scientific advice on cross-sectoral and cumulative impacts was highlighted.

59. Several delegations recalled progress in the development of area-based management tools beyond areas of national jurisdiction. Specific attention was drawn to activities that had been conducted in a number of regional and global organizations. Several other delegations also highlighted improvements in the cooperation between competent regional organizations, such as the signing of a memorandum of understanding on cooperation between the North-East Atlantic Fisheries Commission and the OSPAR Commission for the Convention for the Protection of the Marine Environment of the North-East Atlantic (September 2008). A suggestion was made that a systematic analysis of the modalities for establishing and managing these forms of spatially based conservation would be useful.

60. At the same time, attention was drawn to the lack of progress with respect to areas beyond national jurisdiction in meeting the commitment in the Johannesburg Plan of Implementation to establish marine protected areas consistent with international law and based on scientific information, including representative networks by 2012.

61. Some delegations observed that representative networks of marine protected areas should aim at protecting areas that were representative of the full range of interconnected habitat types that comprise ecosystems.

62. Several delegations noted the work in the context of the Convention on Biological Diversity relating to scientific criteria for identifying ecologically or biologically significant marine areas in need of protection and scientific guidance for selecting areas to establish representative networks of marine protected areas. The work of FAO on criteria for the identification of vulnerable marine ecosystems was also recalled.

63. Several delegations highlighted the need for further development and application of such criteria. In that regard, several other delegations called for the development of a common understanding of the methodology for the identification of marine protected areas, taking into account the criteria developed by FAO and the

Convention on Biological Diversity; and for the development of an international list of ecologically or biologically significant marine areas, on a scientific basis, to be considered by competent organizations for the designation and management of marine protected areas.

64. A proposal was made that an intergovernmental process be established possibly at the regional level, engaging international experts to help to identify priority areas on the basis of the above-referenced criteria, as well as to further refine the work on bioregionalization. In that regard, the work on Global Open Oceans and Deep Seabed Biogeographic Classification was cited as an example to build upon. The view was expressed that such a process would not need to be delayed by the more complex and difficult task of determining applicable policy and management arrangements, which could be eventually considered separately by States and by intergovernmental organizations within the context of their mandates. In that context, it was suggested that the General Assembly could call upon relevant intergovernmental organizations, or a working group, to undertake the required work for elaborating recommendations on representative networks of marine protected areas beyond areas of national jurisdiction, based on scientific criteria and guidance of the Convention on Biological Diversity, in order to meet the 2012 commitments. In this context, the potential role of UN-Oceans was also highlighted. However, other delegations reiterated their concerns about the creation of new bodies and indicated that these efforts should support sectoral and regional work already conducted, build upon existing structures and initiatives and focus on enhancing cooperation and coordination among them.

65. Several delegations proposed the development of a template for a memorandum of understanding on the designation of multi-purpose marine protected areas beyond areas of national jurisdiction to be used by relevant organizations in a regional context.

66. It was underlined that management arrangements should be based on science, including considerations of threats and ecological values. Several delegations emphasized the need for flexibility in the selection of area-based management tools, and the need to avoid a "one-size-fits-all" approach, recognizing regional and local characteristics. In that regard, some delegations noted that the designation of marine protected areas did not require closing those areas to all activities, or particular activities, but rather managing those areas to ensure that ecological values were maintained. A suggestion was made that fisheries management measures, such as the protection of spawning stocks and the establishment of catch or fishing limits for specific areas could be considered a form of marine protected area.

67. Several delegations emphasized that marine protected areas beyond areas of national jurisdiction needed to be consistent with international law, as reflected in the Convention. The view was expressed that marine protected areas needed to have: clearly delineated boundaries; a strong causal link between the harm being addressed and management measures, which should be flexible and adaptive; and implementation, compliance and enforcement measures consistent with international law, as reflected in the Convention. Some delegations pointed out the importance of recognizing the jurisdiction of existing authorities that were beyond areas of national jurisdiction, in particular, the International Seabed Authority.

68. Delegations emphasized the need to ensure the full participation of sectors and other stakeholders in the development of area-based management. The view was

expressed that it was important for States to participate in the management of those areas and for the interests of developing countries, in particular, countries dependent on the resources of a given area, to be considered in the designation of marine protected areas.

69. Several delegations believed that developments in this area should be reviewed more frequently. To that end, it was proposed that the Working Group be convened annually to assess and evaluate progress and to provide necessary guidance for future work in an open and transparent manner.

Marine genetic resources

70. Delegations generally recognized that the Convention provided the framework for all activities in the oceans and seas, including in respect of marine genetic resources beyond areas of national jurisdiction. However, the view was also expressed that the Convention's scope did not encompass marine genetic resources and that only the mandate of the Convention on Biological Diversity provided the legal regime in that regard.

71. Divergent views were expressed on the relevant legal regime under the Convention regarding marine genetic resources beyond areas of national jurisdiction. Several delegations observed that, according to General Assembly resolution 2749 (XXV) and Part XI of the Convention, which they noted was part of customary international law, the seabed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction (the "Area"), as well as its resources, were the common heritage of mankind. They emphasized that the common heritage of mankind, including the fair and equitable sharing of benefits, applied to the biological resources of the Area. Several delegations noted the competence of the International Seabed Authority in that regard. Some delegations also stressed that, under the Convention, the legal regime applicable to marine resources was defined by the maritime zone in which they were found, not by their nature as mineral or biological resources.

72. Other delegations stressed that Part XI only addressed mineral resources, and expressed the view that marine genetic resources beyond areas of national jurisdiction were regulated by the high seas regime in Part VII of the Convention. They observed that the mandate of the International Seabed Authority in relation to marine biological diversity was specifically set out in article 145 of the Convention relating to the protection of the marine environment with regard to activities in the Area.

73. A number of delegations underlined the need to address implementation gaps in this connection. Notably, delegations highlighted the following practical measures: promotion of marine scientific research; development of codes of conduct for research activities; environmental impact assessments, including the development of guidance on assessments of impacts on marine genetic resources within the general process of environmental impact assessment; establishment of mechanisms for cooperation, sharing of information and knowledge resulting from research on marine genetic resources, including by increasing participation of researchers from developing countries in relevant research projects; establishment of marine protected areas, discussion of practical options for benefit-sharing, including options for facilitating access to samples; and consideration of the

intellectual property aspects of marine genetic resources beyond areas of national jurisdiction.

74. Several delegations called for the strengthening of the role of the present Working Group, including with a view to adopting specific provisions to regulate access to marine genetic resources beyond areas of national jurisdiction and exploitation. A proposal was made that the United Nations should urgently initiate a negotiating process with the aim of defining the legal aspects related to marine biodiversity beyond areas of national jurisdiction, including the establishment of an institutional structure responsible for the management and conservation of the resources. The possible adjustment of the mandate of the International Seabed Authority could be considered in that context.

75. Several delegations expressed the view that an implementing agreement on marine biodiversity beyond areas of national jurisdiction to the Convention should address marine genetic resources, and recognize the applicability of the concept of common heritage of mankind in this respect. A view was expressed that a new instrument should be developed within the framework of the Convention on Biological Diversity. Other delegations reiterated that the Convention adequately regulated marine genetic resources beyond areas of national jurisdiction and that, therefore, no new international legal regime needed to be developed. In particular, a particular concern was expressed that a new legal regime regarding benefit-sharing would impede research and developments from which humanity at large benefited.

76. A number of delegations expressed support for the development of practical measures to enhance the conservation and sustainable use of marine genetic resources beyond areas of national jurisdiction. Several delegations stressed the need to address marine genetic resources beyond areas of national jurisdiction on the basis of integrated and ecosystem approaches. The view was expressed that activities related to marine genetic resources beyond areas of national jurisdiction should be carried out in accordance with principles of conservation and sustainable development and on the basis of a precautionary approach. Policies governing such activities should seek a balance between environmental protection, freedom of scientific research and benefits to be derived by the international community.

77. Several delegations noted the need to take into account the work under other relevant forums, such as the Convention on Biological Diversity, FAO, the International Treaty on Plant Genetic Resources for Food and Agriculture and the World Intellectual Property Organization, when considering practical measures.

Identification of key issues and questions where more detailed background studies would facilitate consideration by States of these issues

78. Delegations generally agreed that detailed background studies addressing knowledge gaps relating to the conservation and sustainable use of marine biological diversity in areas beyond areas of national jurisdiction would facilitate consideration by States of those issues. At the same time, some delegations recalled that the need for further studies should not be used as a reason to delay the development of measures for the conservation and sustainable use of marine biodiversity in areas beyond areas of national jurisdiction.

79. It was also generally agreed that States and competent international organizations could consider undertaking further studies based on proposals put

forward by the meeting. Some delegations suggested that UN-Oceans, through its Task Force on Biodiversity Beyond Areas of National Jurisdiction, could assist in identifying ways and means of carrying out background studies.

80. The list of studies suggested by delegations included:

(a) Understanding of patent systems in relation to marine biodiversity, including study of the purpose and benefits of patents and the application of patents to marine organisms;

(b) Capacity-building, including compiling and matching of current activities on capacity-building and needs of developing States;

(c) Adverse impacts of climate change on marine biodiversity in areas beyond national jurisdiction;

(d) Analysis of the current international legal framework, including gaps, strengths and weaknesses;

(e) Biogeographic classification, building on the work that has already been carried out in that regard;

(f) Ways to improving the sharing and consistency of data, including the possible role of the GRAME Database;

(g) Reviewing approaches to environmental impact assessments, including in the context of the International Seabed Authority and the regional seas programmes, and determining commonalities and best practices;

(h) Identification of marine biological organisms in areas beyond national jurisdiction, as well as the registration of species;

(i) Biotechnology, including its potential uses and the distribution of benefits therefrom;

(j) Techniques for the standardization of data, including for previously collected data;

(k) Species distribution in the deep sea, including use of molecular technologies;

(l) Extrapolation of studies conducted in areas of national jurisdiction and investigation of how such studies could aid in understanding marine biodiversity beyond areas of national jurisdiction; and

(m) Further establishment of databases, including information on research activities in order to facilitate cooperation.